

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

JAMES K. BISHOP,

Petitioner,

: Case No. 2:24-cv-4063

- vs -

District Judge James L. Graham
Magistrate Judge Michael R. Merz

JAY FORSHEY, WARDEN,
Noble Correctional Institution,

:

Respondent.

DECISION AND ORDER DENYING MOTION FOR DISCOVERY

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Petitioner's Request for Leave of Court to Request Discovery (ECF No. 40).

Judgment was entered in this case on June 13, 2025, dismissing the case with prejudice (ECF No. 33). In the Order to enter judgment, Judge Graham adopted the Supplemental Report and Recommendations recommending dismissal because the Court had received no objections to that R&R from Petitioner (ECF No. 32). On June 30, 2025, the Court received and docketed what Petitioner labeled as "Objections to Order Adopting Supplemental R&R" (ECF No. 34). Neither the Rules Governing § 2254 Proceedings nor the Rules of Civil Procedure provide for filing "objections" to a District Judge's order to enter judgment. To allow the objections to be considered on their merits, the Magistrate Judge construed them as a motion to amend the judgment, but recommended that, thus construed, the motion to amend should be overruled (Report, ECF No. 35). Petitioner has objected to that Report (ECF No. 38) and those Objections are pending before

Judge Graham; Respondent's time to respond has not yet expired, so the Objections are not ripe for decision as yet.

Now Petitioner has moved for leave to conduct discovery. He seeks to obtain documents from Casey Robinson who he represents is the Chief of Police of Cross Creek Township. He claims to have made a public records demand on Chief Robinson on September 16, 2022, pursuant to Ohio Revised Code § 149.43 to which Chief Robinson has never responded; a copy of the demand is attached.

Rule 4 of the Rules Governing § 2254 Cases provides in pertinent part "A judge may, for good cause, authorized a party to conduct discovery under the Federal Rules of Civil Procedure." The Magistrate Judge denies Petitioner's Motion for lack of good cause for the following reasons.

First of all, the Federal Rules of Civil Procedure do not authorize post-judgment discovery.

Second, Casey Robinson was not the Police Chief of Cross Creek Township when Bishop made his demand. At least as of 2019, that position was held by John Stasiulewicz. Assuming that the demand was properly made and translates to Chief Robinson's successor in office, Bishop had a remedy by writ of mandamus to the Ohio Fifth District Court of Appeals when he received no response.

Third, under Fed.R.Civ.P. 34, a request for production of documents is to be made to an opposing party. There is no evidence that the State of Ohio as the effectively defending party in this case has the documents demanded.

Fourth, even if these documents were discoverable from the State and the Rules authorized post-judgment discovery, the Motion is very untimely. Petitioner seems to believe that as long as he can imagine some new source of evidence that he is not guilty, he is entitled to protract decision in this case until he has exhausted those possibilities.

For the reasons already given in the Report recommending denial of reopening of the judgment, Bishop has not proven his actual innocence.

July 18, 2025.

s/ Michael R. Merz
United States Magistrate Judge